United Nations A/HRC/38/NGO/35

General Assembly

Distr.: General
5 June 2018

English only

Human Rights Council
Thirty-eighth session
18 June-6 July 2018
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Khiam Rehabilitation Center for Victims of Torture, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[24 May 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.18-09006(E)
1809006

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Bahraini government's sabotage against fair trial*

Background

On 1 May 2017, the representatives of 82 countries brought forth recommendations to the Kingdom of Bahrain in the Third Cycle of the Universal Periodic Review at the UN Human Rights Council. Many of the recommendations revolved around the balance and impartiality of the judiciary, and this came on the back of many harsh and improper sentences against human rights defenders and political activists. Many complained of torture and inhuman treatment of detainees, whereas nothing was done by the judicial authority to deal with this.

Right to a Fair Trial

The Bahrain Constitution provides provisions to control and organise the judiciary, with the first coming in Article 20 ("Criminal Trials"), which states, "[t]here shall be no crime and no punishment except under a law", with Article 4 affirming, "[j]ustice is the basis of government". These provisions create a requirement on the country to incorporate these principles in the governing system and should all be guaranteed under the judiciary and trials. Further, the country should attempt to warrant that international agreements are reflected.

However, in practice, the government of Bahrain has punished its citizens, arbitrarily interpret several articles and provisions as well as the criminal laws. For instance, Article 122 in the Criminal Code states: "He will be punished by death he who commits to antagonizing work with a foreign state against the state of Bahrain." The use of this article has resulted in the sentencing of three Bahraini citizens from the Wefaq National Islamic Society, the Secretary-General, Sheikh Ali Salman, and two other members, after expressing peaceful political views regarding the Government of Bahrain. The Article itself is particularly vague in describing the parameters of the rule, endangering any active human rights defender or political dissident that airs his/her views.

Judiciary's Independence to Ensure Justice

The judiciary in Bahrain suffers from the loss of the most important elements of the standards of independent judiciary. The Supreme Judicial Council is directly appointed by the King and he seats himself head of the judiciary. There are also no clear criteria for the process of appointment, with judges not being subject to any examination. In addition, the judges are mainly members of the ruling family themselves.

The absence of transparency in appointment to the judiciary and the lack of a mechanism to carry out checks and balance, has allowed the King to appoint judges from the ruling family and the families close to him. With members from the Sunni community having first dibs, as well as foreign Arabs (such as Egyptians) having the chance to be appointed in to the judiciary,with Shia Bahrainis facing slim chances of being appointed. The Public Prosecution mirrors this policy, where its members are appointed in identical fashion as that of the judiciary, and the considerations are the same (ruling family first, Sunni community members second, foreign Arabs third, and Shia Bahrainis last).

Furthermore, the military judiciary, after the amendment to Article 105 of the Constitution, has allowed the prosecution of civilians by military courts. The Military Justice Act has also given the authority for judges in such courts to be appointed by order of the King, after the nomination of the candidates. This judiciary is therefore no different from the civil judiciary in that it lacks any independence.

The right to contact a lawyer

In Bahrain, the majority of defendants in human rights and political cases are deprived of from contacting lawyers, both in police stations and at the public prosecution. Lawyers regularly apply to the security authorities and the public prosecution with official requests to see their clients but are usually always denied. It always becomes apparent after a case is prepared by the Public Prosecution against the defendants that a lawyer was required to attend with the client. This demonstrates the illegality of such a policy which has occurred time and again in numerous cases.

The Code of Criminal Procedure gave absolute power to the police and the Public Prosecution to allow lawyers to enter the interrogation chambers and to monitor the safety of the investigation proceedings against the accused. However, in contravention of the Constitution, we have observed that numerous defendants in criminal cases were not legally represented or were not allowed to have their lawyer present. We have observed cases where lawyers have been barred from being with their clients while they are being questioned at police stations, as well as defendants being interrogated at the Public Prosecution Office.

Confessions under duress

There are dozens of detainees who report to the prosecution during their interrogation that their confessions in the Department of Criminal Investigation and Evidence were committed by coercion, torture, threats or inducement. In the event of their confession, they will be released, but the Public Prosecutor's Office does not show any seriousness in the investigation of these allegations, and is often the basis for their conviction at court.

The prosecutors who investigate these cases often report that they sometimes refer the defendants' allegations of torture to the Special Investigation Unit investigating allegations of torture and ill-treatment. This has rarely resulted in any convictions against any officers and has remained without tangible results. The majority of victims end up losing hope and confidence in these mechanisms and organisations.

Judiciary and Trials

Many cases of violations to defendants' rights in the courts, which include denying them legal access to counsel at the preliminary stages of their criminal cases, as well as instances of denying them opportunities to discuss the substantive evidence before the court. The Public Prosecution has continuously relied on secret witnesses in criminal cases who do not attend trial sessions. This challenges the fairness of the criminal courts and defendants' counsels cannot cross-examine or challenge these secret witnesses.

Furthermore, expeditiousness in dealing with cases in the criminal courts is not a principle that is upheld, with severe delays in the processing of criminal cases forcing many defendants to remain in custody for long periods of time. A recent example of this is the case of Sheikh Mohammed Saleh al-Qashmi, who was kept in detention for 12 months and then found innocent by the court.

Legal modification of criminal cases

The legal adjustment or modification of the criminal cases are a particular issue. Bahrain's security authorities commence an investigation, and usually alter a case to reflect the political interests of the authorities. We have found that most criminal cases that concern a political interest are expeditiously investigated by the Public Prosecution Department and an adverse judgment against the defendant is reached at the Court of Cassation.

In Bahrain's criminal law, legal modification/adaptation remains a jurisdiction of the criminal judge. However, we have consistently observed that criminal judges surrender any counter arguments and always choose to adopt the opinion of the security authorities. This has been illustrated with the case concerning "communications with Qatar". The Secretary General of the Wefaq Party found himself in a position where his case's accusations were repeatedly modified to correspond to social media materials to reach a position where a defamation charge can be sought despite the fact that all the materials and evidence based existed before the alleged communications took place.

Right of the defendant to a defense

The defense is an inherent right of every defendant. This right is provided for in the Constitution and the law. The judge, the prosecutor or any person who initiates the criminal case must allow the defendant an opportunity to defend himself or with the assistance of a lawyer.

We have found that in most criminal cases of a political or juridical nature, the court rejects the request to discuss secret witnesses. Many of the defendants have provided conclusive evidence of their innocence and have not been accepted by the court. Defendants often file a complaint with the criminal judge about the torture that accompanies the investigation, however, they are never properly followed up.

Recommendations

- Amend the mechanisms for the appointment of the Supreme Council of the Judiciary so as to allow the public to exercise its authority in the control of the judiciary.
- Establish a clear and transparent mechanism to ensure that all sectors of society who meet the objective conditions of judicial practice and engage in judicial work are allowed to participate.
- Abolish the constitutional and legal amendment allowing civilians to be tried by military courts.
- Amend the Code of Criminal Procedure to ensure that defendants can communicate with their lawyers in all cases, and limit the authority of the judicial officers and prosecutors to prevent lawyers from entering interrogation rooms.
- Ensure mechanisms of supervision of the work of the Public Prosecutor's Office and its investigating agents ensure that defendants are not subjected to any pressure or coercion while making their statements.

• To train judges to the necessary level to operate in a way that can achieve justice and preserve the constitutional and human rights of defendants.

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*Salam For democracy and Human Rights, NGO without consultative status, also shares the views expressed in this statement.